

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAMIAN TRAPANI,

Plaintiff,

-vs-

9:14-CV-556

BRIAN PULLEN, et al.,

Defendants.

**Thomas J. McAvoy,
United States District Judge**

DECISION and ORDER

This matter was referred to the Hon. Thérèse Wiley Dancks, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. No objections to the February 13, 2016 Report-Recommendation have been raised. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation and Order for the reasons stated therein.

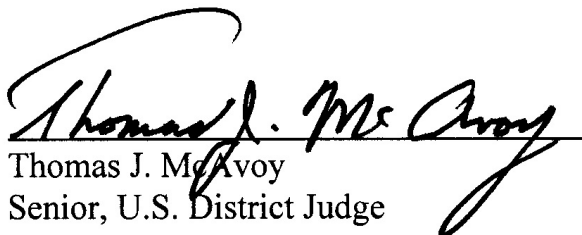
Accordingly, the Report and Recommendation of Magistrate Judge Wiley Dancks is hereby **ADOPTED**, and:

1. Defendants' Rule 41(b) motion to dismiss, dkt. # 23, is hereby **DENIED** as moot;
2. Defendants' 12(b)(6) motion to dismiss is hereby **GRANTED** in part and **DENIED** in part, as follows:

- a. The motion is **GRANTED** without prejudice as to Plaintiff's claims for: (1) excessive force in violation of the Eighth Amended against Defendant Martuscello; and (2) retaliation in violation of the First Amendment against Defendants Pullen and McGlynn;
 - b. The motion is **GRANTED** with prejudice as to Plaintiff's: (1) RLUIPA claim against Defendants King, Syed, and Jane Doe #5; and (2) all claims seeking declaratory and injunctive relief; and
 - c. Denied in all other respects;
3. The Complaint is hereby **DISMISSED** against Defendants Martuscello, Pullen and McGlynn; and
 4. Plaintiff may file an Amended Complaint that complies with the terms of Magistrate Judge Wiley Dancks Report-Recommendation within twenty-one (21) days of the date of this order. Failure to file an Amended Complaint will cause the Court to consider abandoned the claims for which Plaintiff was given leave to re-plead.

IT IS SO ORDERED.

Dated: March 14, 2016


Thomas J. McAvoy
Senior, U.S. District Judge